

Public-Private Partnership in Cadastre: The Case of Turkey and the EU Countries

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Key Words: Private sector, cadastral procedure, Turkey and the EU countries.

SUMMARY

The Privatization is one of the most crucial trends recently. The Privatization can be defined as a transfer of the state tasks to private sector. The transfer can occur entirely or partly. The privatization can be mentioned for various fields traditionally in the responsibility of the State. The cadastre is also one of these fields. On the other hand, as known, cadastral procedure consists of various stages such as adjudication, cadastral survey, registration, processes or approvals, updating cadastral maps and registers and transactions etc. Traditionally, all of these stages have been in the responsibility of the State but in the course of time, private sector has started to take part in some stages. In this context, for cadastre, using of the term public-private partnership will be more suitable than the privatization. Indeed, public-private partnership has been mentioned in many works. At the result of these works, that participation of private sector in cadastre is required and inevitable is agreed. But, what stages have to be executed by the state and what stages can be undertaken by private sectors has been still discussed.

The role of private sector in cadastre has also been discussed in Turkey. In Turkey, theoretically, it is accepted that cadastral survey can be undertaken by private sector but in practice this cannot be applied sufficiently. So, in this study, for Turkey, public-private partnership is examined. Besides, as Turkey has been a candidate country to the EU since 1999, the current situation of public-private partnership in cadastre in the EU countries is also investigated. Eventually, it is purposed a model concerning what the role of private sector should be in the cadastre of future.

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1. INTRODUCTION

In the state administration, some works providing social development and progress are accepted as public services. And offering these services to all citizens in equal is a basic principle. However, the view of the state to the public services has been about to change because of the developed society conditions. On the other hand, although it has been thought that public services have to be done only by the state, later it has been accepted that private sectors can also be used in implementing of these duties. The factors like reconstruction of public organizations; making the state smaller and the increment speed of the population have a big role in the changing of the thoughts and acceptances in this way.

Thus, the Privatization has been one of the most crucial trends recently. The Privatization can be defined as a transfer of the state tasks to private sector. The transfer can occur entirely or partly. The privatization can be mentioned for various fields traditionally in the responsibility of the State. The cadastre is also one of these fields.

As known, the cadastre is one of the most important public services. However, in recently, discussions concerning the participation of private sector in cadastre have started. Indeed, one of the six factors in the “Cadastre 2014-A Vision For A Future Cadastral System” published with the aim of shaping the future cadastre is the privatization in the field of cadastre.

According to Cadastre 2014, public systems tend to be less flexible and customer oriented than private organizations. Free economies demand flexibility in land markets, land planning and land utilization. Private institutions may better provide this flexibility. But, for the necessary security a public engagement is indispensable. On the other hand, it has been stated that most of duties required for establishment and maintaining a cadastral system can be implemented by private sector without risking the registration security (Kaufmann and Steudler, 1998).

Again, public-private partnership constituted the agenda of the Working Party on Land Administration under Economic Commission for Europe of United Nations for long time. Consequently, the workshop on public/private sector relationships in the establishment of land registration systems took place in Tirana in 2000. Many of the EU countries such as Austria, Denmark, Finland, France, Germany, Greece, Netherlands, Spain, Sweden and the United Kingdom and also some candidate countries participated to this workshop. In the consequence of the workshop, it was stated that the participation of private sector to workings concerning land administration is necessary and inevitable. Besides, the main task and responsibility of the public sector is to arrange the development of society and not to be engaged in operational activities. The capabilities of the public sector should be used to

manage and control the activities of the public administration and to involve the private sector in operational activities as much as possible (UNECE, 2000).

On the other hand, the necessity of participation of private sector to the cadastral activities was also stated in the Declaration of the Cadastre in European Union. This declaration was prepared by Cadastre Permanent Committee established in first congress on cadastre in the EU held in Granada in 2002.

As seen from all these, the subject of the participation of private sector to cadastral procedure has constituted the focus of many works. Even, lots of countries have started to benefit from private sector in the one or more stages of cadastral procedure.

While these changes are occurring in the world, the questions of what the role of private sector in the field of cadastre in Turkey is, what stages have to be executed by the state and what stages can be undertaken by private sector have been put on the agenda. So, in this study, it has been focused on the investigation of the role of private sector in Turkish cadastre. Besides, it has been tackled the subjects of which ratio the EU countries benefit from the private sector and whether there is a standardization or not. The reason of choosing the EU countries is that Turkey has been in the accession period to the EU since 1999. As known, Turkey was accepted as a candidate country to the EU in December 1999.

Thus, in the contents of this study, an answer has been searched for the question of which role has to be given to private sector in future cadastre. To this end, by investigating the role of private sector in Turkey and in the EU countries, an approach has been given.

2. THE PRIVATE SECTOR IN CADASTRAL PROCEDURE IN TURKEY

Cadastral works have been started with the aim of equitable taxing and the guaranteeing the ownership. Initially, these works have been accepted as public service and, these have been given to the responsibility of the state. Namely, the registration and cadastre services in Turkey have been in traditional public service status since the beginning.

With the announcement of republic in 1923, the duty of carrying on cadastre and registration was given to the Turkish Land Registry and Cadastre (LRC). This organization currently belongs to the Ministry of Building and Public Works, but before, it has served respectively under the ministry of justice, the ministry of finance and the prime ministry.

Thus, LRC has started its legal cadastre works with the aim of forming title registers defined in Turkish Civil Law. In this context, this organization has undertaken the duty of defining the geometrical and legal situations of properties in the boundary of Turkey.

Until 1980's, cadastral works have been in monopoly of the State and carried on by the LRC in the name of the State. Whereas, in the related period cadastre law, it has been stated that in places that the state has approved, technical surveys (i.e. cadastral survey and geodetic surveys) can be done partly or completely by private sector. But, mentioned judgments stayed in law text and couldn't put on the practice (Tüdeş, 1988).

On the other hand, the density of the works in the LRC and the increasing attractiveness of private sector (i.e. better technological opportunities, cheap cost, short time etc.) have been put the requirement of private sector in cadastre on the agenda again. Eventually, in the new cadastre law, the judgment mentioned above has taken up a position. Thus, the period of benefiting from private sector in also practice has been started.

With the validity of this law, the LRC had tendered the triangulation works of about eight districts to private sector. Besides, in some of these districts, cadastral surveys and mapping of properties have also been done by private sector. With this application, the period of public-private partnership has been started in cadastral works in Turkey. However, these applications are not sufficient.

In another side, in recent years, the project named Turkish Land Information System (TAKBIS), which was put on the agenda at the end of 1980's, has been started as a pilot application in the near past. This project has been done by private sector in the control of the LRC. In here, the responsibility of the private sector includes analysis, design, the development of software, education etc.

In addition, in Turkey, the changes based on demand such as subdivision, improvement application, have also been done by private sector. But, LRC has controlled these applications. Besides, these applications have been controlled and approved by the Chamber of Survey and Cadastre Engineers. However, there is no license obligation for private sector.

As a consequence, in Turkey, there is legal framework for the participation of private sector to some stages in cadastral procedure but in practice; private sector has not been benefited sufficiently.

3. THE ROLE OF PRIVATE SECTOR IN CADASTRAL PROCEDURE IN THE EU COUNTRIES

It has been seen that the participation of private sector in the field of cadastre more or less exists in about all countries when the EU countries were investigated. However, private sector has undertaken a duty in different stages of cadastral procedure in each country. So, there are differences among the countries. As known, a cadastral procedure includes many stages such as adjudication, cadastral survey, operations, registration, mapping, updating cadastral products and updating- post cadastre activities (namely changes based on demand) such as applications, subdivision etc. Therefore, while investigating the role of private sector in the EU countries, the cadastral procedure has been classified in seven phases and examined. After that, the results have been given in Table 1.

As seen from Table 1, private sector has taken part in cadastral procedure in the most of the Union countries. But, the participation ratio of private sector has varied from a country to other country. On the other hand, In Sweden of the Union countries, private sector has not been benefited in any stages of the cadastral procedure. However, in the Netherlands and Greece, there is a different situation from other countries. As follows, as a responsible

Agency for land registration and cadastre in the Netherlands, the Kadaster became an Independent Administrative Body by privatizing partly, in 1994. Thus, the Agency itself has worked with special status and hasn't benefited from the private person and companies. In Greece, in the same years, the establishment of title registration system was started. And its responsibility was given to the HEMCO (Hellenic Mapping and Cadastral Organization) but later, a company named Ktimatologio SA was established and the responsibility has been shared between HEMCO and Ktimatologio. So, we can say that the cadastre project in Greece is a public-private partnership.

Table 1: The Role of Private and Public Sector in Cadastral Stages in the EU Countries

Countries	Austria	Belgium	Denmark	Finland	France	Germany	Greece	Ireland	Italy	Luxembur	Netherlan	Portugues	Spain	Sweden	UK	Turkey
Stages																
Adjudication	B	S	B	S	S	S	P	S	S	S	S	S	S	S	S	S
Cadastral Survey	P	S	P	S	B	B	P	-	S	B	S	B	B	S	-	B
Processes/ Approvals	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Mapping	B	S	B	S	B	B	B	B	S	B	S	B	B	S	B	B
Registration	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Updating Cadastral Documents	S	S	S	S	S	S	B	S	B	S	S	B	B	S	S	B
Changes Based Demand	P	B	P	B	P	B	B	B	P	B	S	B	B	S	P	P

P: Private sector, **S:** Public sector and **B:** both public sector and private sector

In another side, in the context of the Union countries, there are countries in which the participation of private sector exists densely from adjudication to registration. Denmark and Austria can be given as sample for this situation. In these countries, private sector has been benefited in the adjudication stage as well. Besides, In Denmark, cadastral survey is completely in the responsibility of private sector.

Another country in which private-public partnership is the best is Germany. In Germany, 65 % of cadastral surveys are done by private sector. The private sector has participated in cadastral surveys in all states of Germany except Bavaria (Teetzmann, 2000). However, in Germany, surveys concerning real rights on land are done either by the State or by the licensed surveyors authorized by the State because of the importance of private ownership and guaranteed by the Constitution. But, in other technical surveys (not related to cadastre and boundary), the license isn't compulsory for the surveyors.

Other Union country in which the role of private sector is high is the United Kingdom. As known, general boundary concept exists in this country. So, cadastral survey hasn't been done. But, if the owner wants, he/she can have the private sector do cadastral survey on condition that the owner himself pays all costs. Again, from the Union countries, in Spain, Finland and Luxembourg, the participation of private sector also exists. Essentially, in Luxembourg, the participation of the private sector is a new concept namely; this concept has existed since 2002.

On the other hand, when the role of private sector has been investigated, the concept of licensed surveyor has been called attention. The license is obligatory in order that the private sector can take a role in cadastral surveys in some countries such as Austria, Belgium, Denmark, France, Germany and Portuguese (as seen in Figure 1).

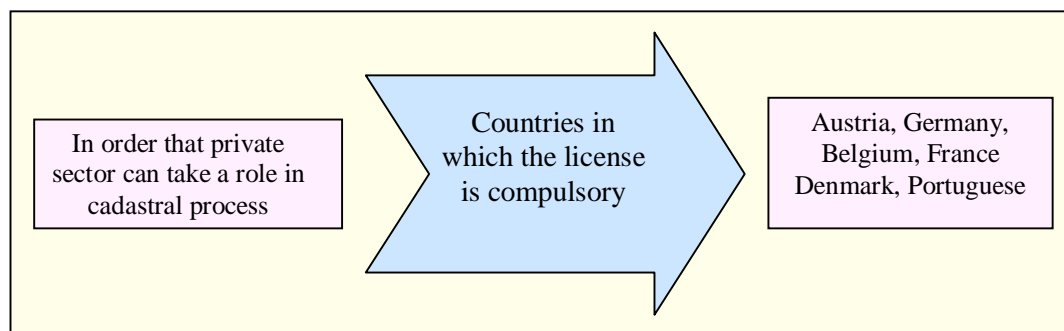


Figure 1: The EU Countries in Which the License Provision Exist

As a consequence, in the most of the EU countries, the participation of private sector is present. The private sector has been benefited in some stages, particularly cadastral survey, implementing operations based on demand, mapping and updating. In other words, while technical operations are done by private sector, operations with legal importance are done by public sector. And, the participation of private sector has increased day by day.

4. CONCLUSION

In recent years, the successes provided by activation of the participation of private sector in all production workings, started a discussion in the field of cadastre as well. In this sense, various workings have been maintained and then it has been reached a consensus about the inevitability of the participation of private sector in cadastral procedure. Besides, the involvement of private sector in cadastral procedure generates mutual economic benefits for the state and private sector.

However, the importance of legal aspect of cadastral process and existence and protection of private ownership with the Constitution has called attention to the sensitivity of this issue. Therefore, while analyzing carefully which stages of cadastral procedure can be benefited from private sector, the policy of private sector has to be defined.

In this context, that the state is made small and that the state only performs the key services and the participation of private sector will both increase productivity and change the State's structure operated clumsy because of dense bureaucracy. At the same time, it will be positive and cheap.

But, that ownership rights, administration of quality and protection of data are guaranteed by the State is of great importance by providing the participation of private sector to cadastre and land registration, which are traditional public services. Therefore, it will be useful that private sector should be benefited in the gathering of data namely cadastral survey and mapping stages and that public sector should be benefited in the adjudication and defining decisions related to land because of the sensitivity of the issue (As seen in Figure 2).

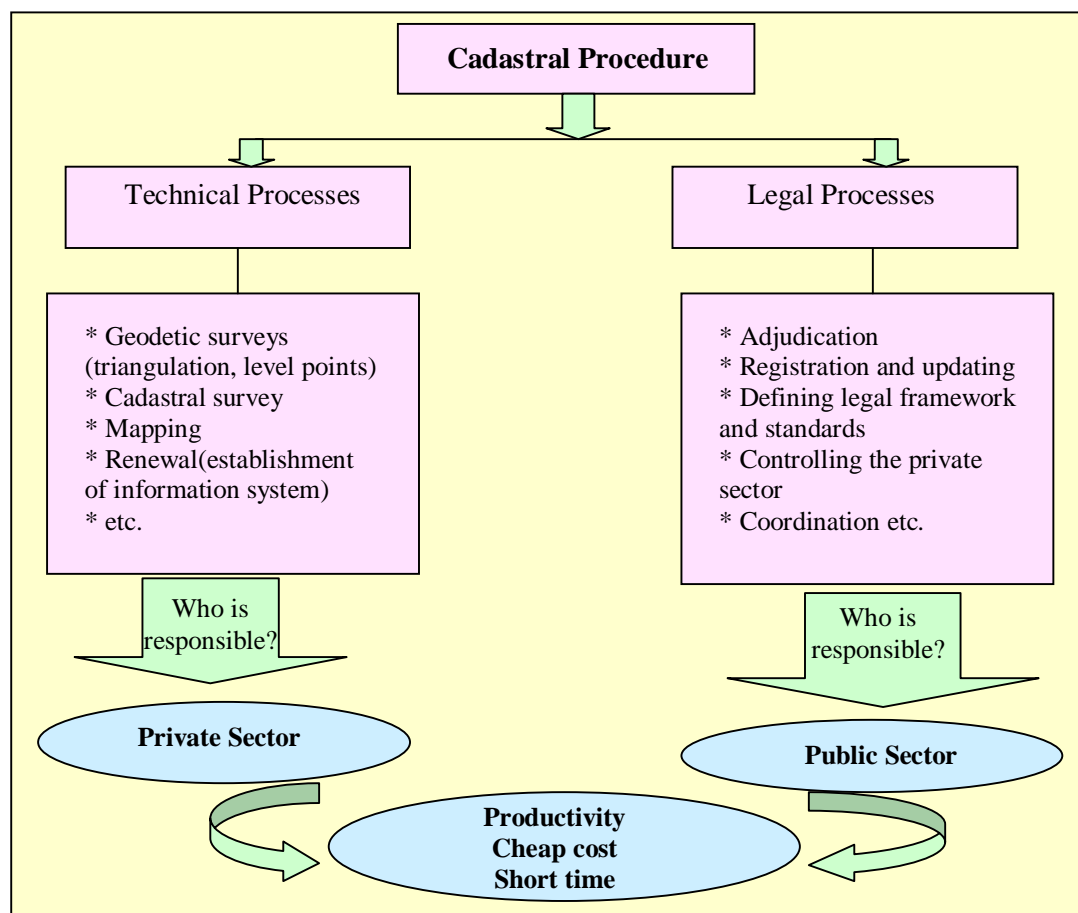


Figure 2: Public- Private Partnership in Cadastral Procedure

Moreover, the obligation of the license should be brought in order that private sector can participate in cadastral procedure like some of the EU countries.

Consequently, while the State is offering the service in the best manner and in equitable, it is required that the State should consider the cost of the service as well as its quality. This has required the involvement of private sector in cadastral procedure. However, the private

sector's services should be directed to the process of data gathering and that all citizens can get state services homogeneously should be guaranteed.

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BIOGRAPHICAL NOTES

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